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**Comptroller General  
of the United States****United States General Accounting Office  
Washington, DC 20548**

## Decision

**Matter of:** Quality First Cleaning**File:** B-292255.2**Date:** January 26, 2004

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### DECISION

Quality First Cleaning (QFC) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DABJ41-03-R-001, issued by the Department of the Army for custodial services at Ft. Riley, Kansas.

We dismiss the protest.

The RFP was issued on April 11, 2003 and proposals were received on May 23. On December 3, QFC was notified that its proposal had been eliminated from the competitive range. QFC submitted a timely debriefing request, and the agency provided a written debriefing to QFC, which outlined the deficiencies in QFC's technical proposal, on December 10. QFC continued communications with contracting officials regarding the evaluation and elimination of its proposal, and then filed an agency-level protest on January 5, 2004. By January 6 letter, the contracting officer dismissed QFC's protest for untimeliness, in accordance with the requirements of Federal Acquisition Regulation (FAR) § 33.103(e). QFC filed this protest with our Office on January 8.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules require that a protest based on other than alleged improprieties in a solicitation be filed, either with the agency or our Office, no later than 10 calendar days after the protester knew, or should have known, the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2003). Furthermore, when a protest initially is filed at the agency level, any subsequent protest to our Office will be considered only if the agency-level protest was timely filed with the agency, and the subsequent protest to our Office is filed within 10 calendar days of actual or constructive knowledge of initial adverse action taken on the agency-level protest. 4 C.F.R. § 21.2(a)(3).

Since QFC learned of its protest basis on December 10, any protest of the matter had to be filed no later December 22 (the first working day after December 20), in order to be timely. QFC's January 5 protest to the agency therefore was untimely, and we will not consider its subsequent protest to our Office. 4 C.F.R. § 21.2(a)(3).

QFC disputes the untimeliness of its January 5 protest. It references the following provision at FAR § 15.503, "Notifications to unsuccessful offerors":

(a) *Preaward notices*

(1) *Preaward notices of exclusion from competitive range.* The contracting officer shall notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice shall state the basis for the determination and that a proposal revision will not be considered.

QFC points out that neither the December 3 letter notifying QFC of the elimination of its proposal from the competitive range nor the December 10 debriefing letter stated that a proposal revision would not be considered, as required under FAR § 15.503(a)(1). QFC maintains that its timeliness period should begin to run on December 29, the date upon which it received "regulatory sufficient notice," i.e., when it received a letter from the agency which specifically stated that "no further proposal revision will be considered." Hence, QFC argues, its January 5 protest should be considered timely.

QFC's argument is unpersuasive. On December 10, QFC clearly knew that its proposal was excluded from the competitive range and the reasons for its exclusion. The firm also knew that the RFP, at section M, para. 1,b(4), provided for proposal revisions only in reference to "those firms determined to be within the competitive range." Hence, and irrespective of the procedural deficiency in the FAR § 15.503(a)(1) preaward notice given, under our timeliness rules the firm had to file a protest within 10 days of that date.<sup>1</sup>

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<sup>1</sup> Moreover, the protester concedes that in a December 22 meeting with the contracting officer's supervisor, the supervisor stated to QFC's representative that proposal revisions would not be accepted from QFC. Even measuring from that date, QFC's January 5 protest also would be untimely. While the protester maintains that the supervisor was not "officially authorized to act with respect to the solicitation," we see no reason not to consider the supervisor's statement to be notice to QFC that it would not be allowed to revise its proposal.

In its comments on the agency's request for summary dismissal, QFC suggests that, irrespective of timeliness, the protest should be considered under the "good cause" exception to our timeliness requirements, 4 C.F.R. § 21.2(c). However, the good-cause exception is limited to circumstances where some compelling reason beyond the protester's control prevents the protester from filing a timely protest. Dontas Painting Co., B-226797, May 6, 1987, 87-1 CPD ¶ 484 at 2. We are aware of no such circumstances here.

The protest is dismissed. In this respect, our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Peacock, Myers & Adams, B-279327, Mar. 24, 1998, 98-1 CPD ¶ 94 at 3-4.

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